IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN, JAIPUR BENCH, JAIPUR.

S. B. CIVIL MISC. APPEAL NO. 2553/2065

M/s. Allied Industries
Versus
Mool Chand & Anr.

Date of Judgment: 18th April 2007.

Hon'ble Mr. Justice R. S. Chauhan

Mr. S.N. Shah, for the Appellant.
Mr. Balvindar Singh, for the Respondent No.1.
Mr. A.S. Khangarot, for the Respondent No.2.

REPORTABLE

(Per Court):

This appeal challenges the order dated 5.6.2006 passed by Workman Compensation Commissioner, Jaipur City, Jaipur whereby the learned Commissioner has granted a compensation of Rs.78, 087/- along with an interest @ 10% per annum w. e. f. 3.6.1999 in favour of Mool Chand Kumawat, the respondent No.1.

The brief facts of the case are that the Mool Chand was working at the factory owned by the appellant. On 3.6.1999, when he was working on the Lathe machine, his left hand was

caught in the machine. Consequently, he lost two fingers and sustained a fracture in this thumb and the smallest finger. At the time of his accident, he was earning Rs.2, 500/- per month. Despite the notice sent by Mool Chand to the appellant on 21.8.1999, the compensation under the Workmen's Compensation Act, 1923 ('the Act of 1923', for short) was not paid to him. Thus, he filed a claim petition before the learned Commissioner for a compensation of Rs.1, 56, 175/-.

The appellant filed their reply before the learned Commissioner. In the written statement, they denied that Mool Chand had ever worked for them. They also denied the factum of the accident and the factum of their receiving the notice dated 21.8.1999. The appellant also claimed that they are covered under the Employees State Insurance Act, 1948 ('the Act of 1948', for short). Therefore, the application filed under the Act of 1923 is not maintainable.

The respondent No.2, the Employees State Insurance Corporation ('the Corporation', for short) also filed their reply.

The respondent No.2 claimed that in September 1999, the appellant had sent a list of laborers working in their factory. However, the said list did not contain the name of Mool Chand. Moreover, on the date of the accident, the employee was not insured. Therefore, the Corporation is not liable to pay any compensation to Mool Chand.

The learned Commissioner framed four Issues. In order to prove his case, Mool Chand produced himself and his co-workers as witnesses and submitted certain documents. In order to substantiate their case, the appellant also examined certain witnesses and submitted certain documents. After going through the oral and documentary evidence, the learned Commissioner granted compensation, as aforementioned. Hence, this appeal before this court.

Mr. S.N. Shah, the learned counsel for the appellant, has raised two contentions before this court: firstly, Mool Chand had never worked for the appellant. Secondly, Mool Chand in his affidavit as well as in his cross-examination admits that the

industry was covered by the Act of 1948. Therefore, under Section 53 of the Act of 1948, the claim petition under the Act of 1923 was not maintainable. Therefore, the learned Commissioner should have rejected the claim petition as non-maintainable. Instead, the learned Commissioner has granted compensation to Mool Chand.

On the other hand, Mr. Banvinder Singh has argued that both Mool Chand and his witness had categorically stated that he was an employee of the appellant. Although, it is true and the industry was registered with the Corporation, but the fact remains that no deductions were made from the salary of the employees and the appellant, as required under the Act of 1948, made no contribution. Therefore, merely because the industry was registered with the Corporation would not oust the jurisdiction of the learned Commissioner. Moreover, at the time of the incident, Mool Chand did not know that the industry was registered with the Corporation. Therefore, he was justified in filing the claim petition under the Act of 1923 before the learned Commissioner.

While supporting the contentions of respondent No. 1, Mool Chand, Mr. A.S. Khangarot, the learned counsel for the respondent-Corporation, has argued that the relationship between the Corporation and the employer is that of trust. The employer is legally bound to contribute under the Act of 1948. However, the appellant had failed to do so. Since the appellant has failed to make the contribution as required by the Act of 1948, the appellant cannot take the advantage of the said Act. Therefore, the Corporation cannot be held liable for making the payment of compensation. Moreover, in case the Corporation is held liable, then the appellant would be permitted to take the advantage of his own wrong. But, in law, no one can be permitted to take advantage of his own wrong.

In rejoinder, Mr. Shah has argued that even if the appellant did not contribute to the Corporation, still the jurisdiction of the learned Commissioner is ousted under Section 53 of the Act of 1948. The lack of contribution is an issue between the Corporation and the employer. Therefore,

Mool Chand cannot claim that Section 53 of the Act of 1948 does not bind him. Furthermore, once the appellant is registered with the Corporation, the Corporation cannot absolve itself of the liability to pay the compensation on the ground that the appellant was not making any contribution to the insurance policy. In case, the Corporation was so aggrieved, it could have taken legal action against the appellant. But, it failed to do so. Therefore, the Corporation is absolutely liable for the payment of the compensation.

We have heard the learned counsels for the parties, have perused the impugned order and have examined record of the case produced before this court.

This case raises four pertinent issues before this court. Firstly, would the Corporation be liable to pay the compensation merely on the ground that the employer is registered with the Corporation? Secondly, whether the Corporation is legally bound to pay the compensation even if the employer does not contribute any money to the Corporation? Thirdly, does the

fact of registration under the Act of 1948 oust the jurisdiction of the learned Commissioner under the Act of 1923? Lastly, whether the learned Commissioner has legally exercised his jurisdiction under the Act of 1923?

However, before these issues can be answered, it is essential to note the relevant provisions of the Act of 1948. Section 1(4) of the Act of 1948 states that this Act shall apply to all factories other than seasonal factories. The appropriate Government may in consultation with the Corporation extend the provision of this Act or any of them to any of the establishment or the class of establishments industrial, commercial, agricultural or otherwise. Section 2(4) of the Act of 1948 defines the word “contribution” as meaning “the sum of money payable to the Corporation by the principal employer in respect of an employee and includes any amount payable by or on behalf of the employee in accordance with the provisions of this Act.” Section 2(8) defines the words “employment injury” as meaning “a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of

his employment, being an insurable employment, whether the accident occurs or the occupational disease is contracted within or outside the territorial limits of India.” Section 2(13A) defines the words “insurable employment” as meaning “an employment in a factory or establishment to which this Act applies.” Section 2(14) defines the words “insured person” as meaning “a person who is or was an employee in respect of whom contributions are or were payable under this Act and who is, by reason thereof, entitled to any of the benefits provided by this Act.”

Section 38 imposes a duty on the principal employer to ensure that all employees in factories or establishments to which this Act applies shall be insured in the manner provided by this Act.

Section 39 deals with contribution and states that the contribution payable under this Act in respect of an employee shall comprise contribution payable by the employer (hereinafter referred to as the employer's contribution) and contribution payable by the employee (hereinafter referred to as

the employee's contribution) and shall be paid to the Corporation." Section 40 further imposes a duty on the principal employer to pay be contribution in the first instance. The said section is as under :-

> "40. Principal employer to pay contributions in the first instance.
>
> (1)The principal employer shall pay in respect of every employee, whether directly employed by him or by or through an immediate employer, both the employer's contribution and the employee's contribution.
>
> (2) Notwithstanding anything contained in any other enactment but subject to the provisions of this Act and the regulations, if any, made thereunder, the principal employer shall, in the case of an employee directly employed by him (not being an exempted employee), be entitled to recover from the employee the employee's contribution by deduction from his wages and not otherwise :
>
> PROVIDED that no such deduction shall be made from any wages other than such as relate to the period or part of the period in respect of which the contribution is payable, or in excess of the sum representing the employee's contribution for the period.
>
> (3) Notwithstanding any contract to the contrary, neither the principal employer nor the immediate employer shall be entitled to deduct the employer's contribution from any wages payable to an employee or otherwise to recover it from him.
>
> (4) Any sum deducted by the principal employer from wages under this Act shall be deemed to have been entrusted to him by the employee for the purpose of paying the contribution in respect of which it was deducted.

(5) The principal employer shall bear the expenses of remitting the contributions to the Corporation."

Section 44 imposes a duty on the employer to furnish returns and to maintain registers in certain cases. It is as under :-

" 44. Employers to furnish returns and maintain registers in certain cases.

(1) Every principal and immediate employer shall submit to the Corporation or to such officer of the Corporation as it may direct such returns in such form and containing such particulars relating to persons employed by him or to any factory or establishment in respect of which he is the principal or immediate employer as may be specified in regulations made in this behalf.

(2) Where in respect of any factory or establishment the Corporation has reason to believe that a return should have been submitted under sub-section (1) but has not been so submitted, the Corporation may require any person in charge of the factory or establishment to furnish such particulars as it may consider necessary for the purpose of enabling the Corporation to decide whether the factory or establishment is a factory or establishment to which this Act applied.

(3) Every principal and immediate employer shall maintain such registers or records in respect of his factory or establishment as may be required by regulations made in this behalf."

Section 45 defines the functions of the Inspectors

appointed by the Corporation. Section 45A deals with the power of the Corporation to determine the contribution where the employer has failed to file any returns, particulars, registers or record and has failed to furnish or maintain them in accordance with Section 44. According to Section 45B, the recovery of contribution under this Act shall be made as arrears of land revenue. Moreover Section 45G lays down the other modes of recovery. Section 46 defines the various benefits to which an employee of a factory or an establishment is entitled. Section 46(c) clearly states “periodical payments to an insured person suffering from disablement as a result of an employment injury sustained as an employee under this Act and certified to be eligible for such payments by an authority specified in this behalf by the regulations (hereinafter referred to as disablement benefit).”

Section 51 defines “disablement benefit” as “subject to provisions of this Act, a person who sustains temporary disablement, whether total or partial shall be entitled to periodical payment (at such rates and for such periods and

subject to such conditions as may be prescribed by the Central Government).” Section 51A states that “an accident arising in the course of an insured person's employment shall be presumed, in the absence of evidence to the contrary, also to have arisen out of that employment.”

Section 53 places a bar against receiving or recovery of compensation or damages under any other law as under :-

> An insured person or his dependants shall not be entitled to receive or recover, whether from the employer of the insured person or from any other person, any compensation or damages under the Workmen's Compensation Act, 1923 or any other law for the time being in force or otherwise, in respect of an employment injury sustained by the insured person as an employee under this Act.

Section 85 contains the penal provision and is as under :-

> “85. Punishment for failure to pay contributions, etc.
> If a person---
> (a) fails to pay any contribution which under this Act he is liable to pay, or
> (b) deducts or attempts to deduct from the

wages of an employee the whole or any part of the employer's contribution, or

(c) in contravention of section 72 reduces the wages or any privileges or benefits admissible to an employee, or

(d) in contravention of section 73 or any regulation dismisses, discharges, reduces or otherwise punishes an employee, or

(e) fails or refuses to submit any return required by the regulations, or makes a false return, or

(f) obstructs any Inspector or other official of the Corporation in the discharge of his duties, or

(g) is guilty of any contravention of or non-compliance with any of the requirements of this Act or the rules or the regulations in respect of which no special penalty is provided,

he shall be punishable---

(i) where he commits an offence under clauses (a), with imprisonment for a term which may extend to three years but--

(a) which shall not be less than one year, in case of failure to pay the employee's contribution which has been deducted by him from the employee's wages and shall also be liable to fine of ten thousand rupees;

(b) which shall not be less than six months, in any other case and shall also be liable to fine of five thousand rupees:

PROVIDED that the Court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a lesser term;

(ii) where he commits an offence under any of the clauses (b) to (g) (both inclusive), with imprisonment for a term which may extend to one year or with fine which may extend to four thousand rupees, or with both."

A bare perusal of these provisions clearly reveals that the Act emanates from the concept of social justice contained in the preamble in the Constitution of India. The Act is a beneficial piece of legislation enacted for protecting the interest of the employees engaged in factories or other establishments. The Act imposes a legal duty on the employer for getting his factory or establishment registered with the Corporation, for making the contribution and the employer's contribution, and the employee's contribution at the first instance, and for maintaining proper registers and other documents required under the Act. In case the employer fails to do so, the contribution can be recovered as a recovery of land revenue and the employer can be prosecuted under Section 85 of the Act. Thus, the act creates a relationship of trust between the Corporation, the employer and the employee. Since the Act is a beneficial piece of legislation in favour of the employee, the other provisions, special Section 53 of the Act has to be interpreted keeping in view the beneficial nature of the Act. Although Section 53 seems to impose a bar on the employee and seems to prevent him from seeking compensation under

the Act of 1923, but such a bar can come into play if and only if the employer has discharged his legal duties imposed by the Act. Since the law does not permit a person to take the benefit of his own wrong or fault, an employer cannot invoke Section 53, when he has failed to insure the employees as required by Section 38, has failed to make contribution, as required by Section 39 and has equally failed to pay the employees contribution in the first instance as required by Section 40 and has failed to furnish the returns and to maintain the registers as required by Section 44. In case an employer is permitted to take the benefit of Section 53, then the employers would be motivated to violate the provisions of the Act and still be permitted to seek the protection of Section 53 of the Act. Such an absurd or anomalous situation could not be the intention of the legislation in enacting the bar contained in Section 53 of the Act.

Considering the parameters of the Act of 1948 merely because a factory or an establishment is registered with the Corporation would not ipso facto impose a duty on the

Corporation to grant medical benefits to the employee. Until and unless the employer fulfills his part of the legal duties imposed by the Act of 1948, the Corporation cannot be held liable to pay the benefits under the Act of 1948. Therefore, the contention of the learned counsel for the appellant that merely because the appellant's factory is registered with the Corporation, hence the Corporation is liable to make the payment of the compensation is untenable. Moreover, it is not in dispute that although the factory was registered with the Corporation, the appellant failed to deposit the employer's contribution and the employee's contribution at the first instance. It is also not in dispute that the appellant did not recover the employee's contribution from the wages paid to the respondents. It is also not in dispute that the appellant failed to submit the returns and to maintain the registers. Therefore, clearly the appellant has violated the provisions of Sections 39, 40 and 44 of the Act. Since the appellant has failed to discharge his legal duties under the Act, they cannot claim the benefit of Section 53 of the Act.

The learned counsel for the appellant has relied on the case of M/s. Bharagath Engineering v R. Ranganayaki & Anr. (2003 LLR 227) to buttress his contention that in case the factory or the establishment is registered with the Corporation, then kSection 53 of the Act ousts the jurisdiction of the Workmen's Compensation Commissioner under the Act of 1923. The said case is distinguishable on facts from the present case before this Court. In that case the factory was not registered with the Corporation when the employee died during the course of his employment. The registration was done after the said accident. While extending the benefit of the Act of 1948, Hon'ble the Supreme Court held that it is immaterial when the factory or establishment was registered with the Corporation. Even if it was registered after the death of the employee, even then the benefit under the Act of 1948 would have been given to the employee. Under those circumstances, the jurisdiction of the Workmen Compensation Commissioner under the Act of 1923 was held to be ousted.

However, in the present case, the facts are quire

different. Firstly, the factory was registered prior to the accident. Secondly, the employer singularly failed to pay the employer's contribution and at the first instance to pay the employee's contribution. As stated above, he violated various provisions of the Act of 1948. Although he has failed to fulfill the legal duties imposed by the Act of 1948, still the appellant wishes to take an advantage of Section 53 of the Act of 1948. It is a desperate attempt by the appellant to escape the liability of having to pay the compensation to the respondents by taking refuge behind Section 53 of the Act of 1948. The prohibition contained in Section 53 cannot be invoked by the employer who has blatantly violated the provisions of the Act of 1948. Section 53 was not maintained as an escape route for an erring employer. Therefore, the case of M/s. Bharagath Engineering (supra) is inapplicable to the present case

In case the appellant wanted to take the defence of Section 53 before the learned Commissioner, they were required to establish the fact that they have fulfilled all the legal duties assigned under the Act of 1948. But, as observed by the learned Commissioner, even the essential registers were not

maintained properly by the appellant. Therefore, the learned Commissioner has rightly and legally exercised his jurisdiction under the Act of 1923.

In the result, this appeal has no force. It is, hereby, dismissed. There shall be no order as to costs.

R. S. Chauhan J.

mrg.